

**Exhibit (4) Photographs 1-17 of MAYFIELD and  
UAD SITES January 8, 2008.**

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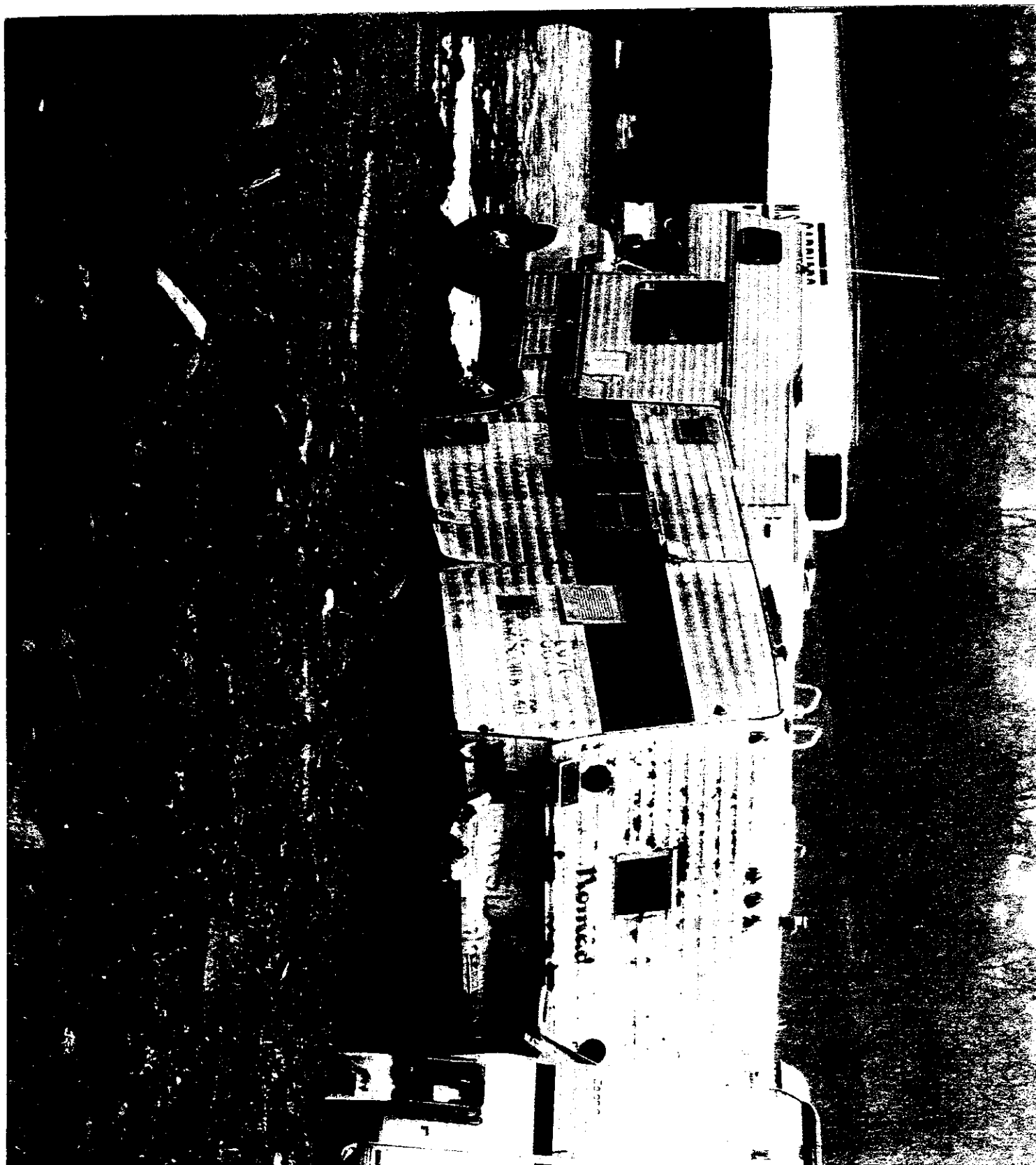


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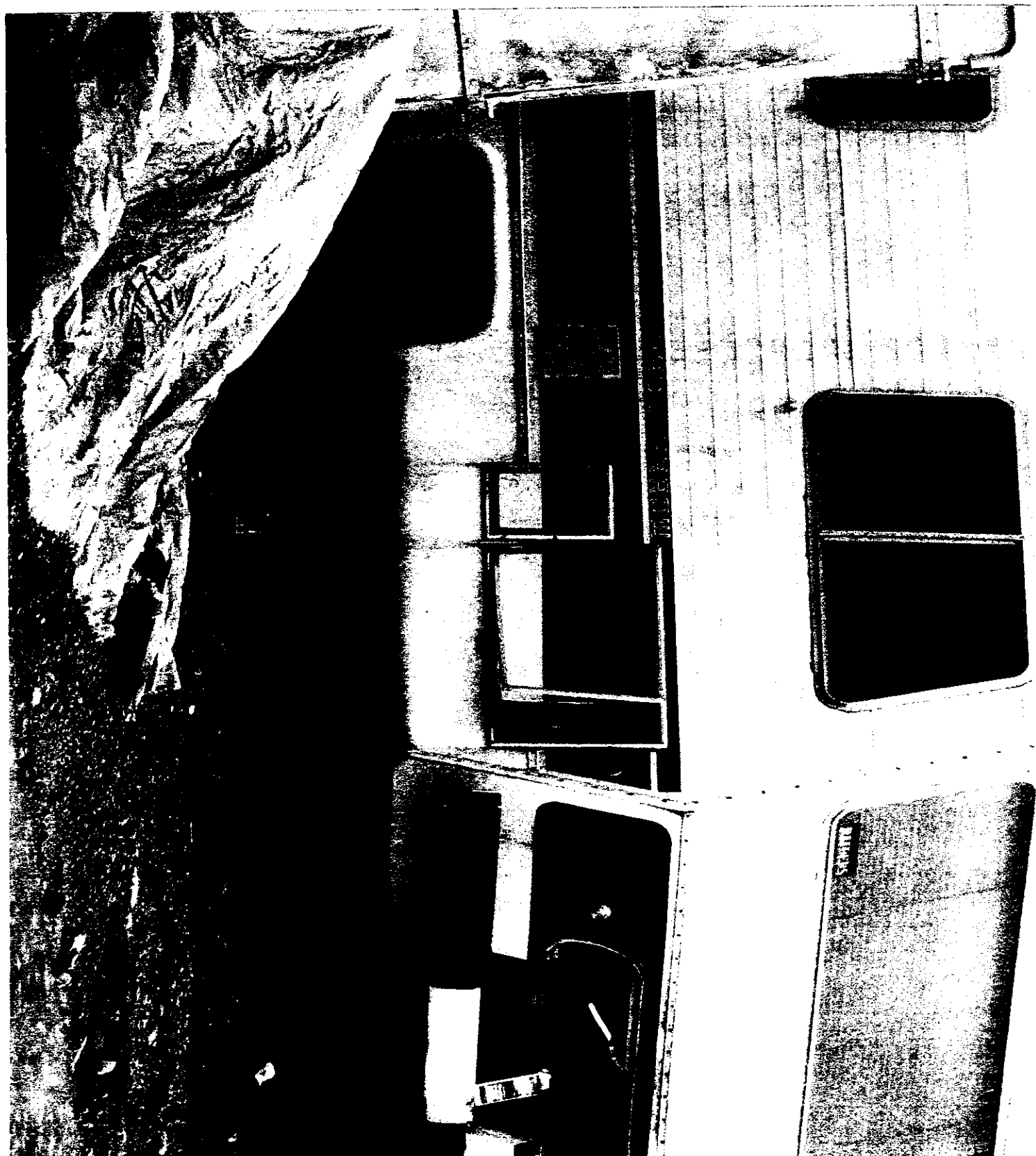




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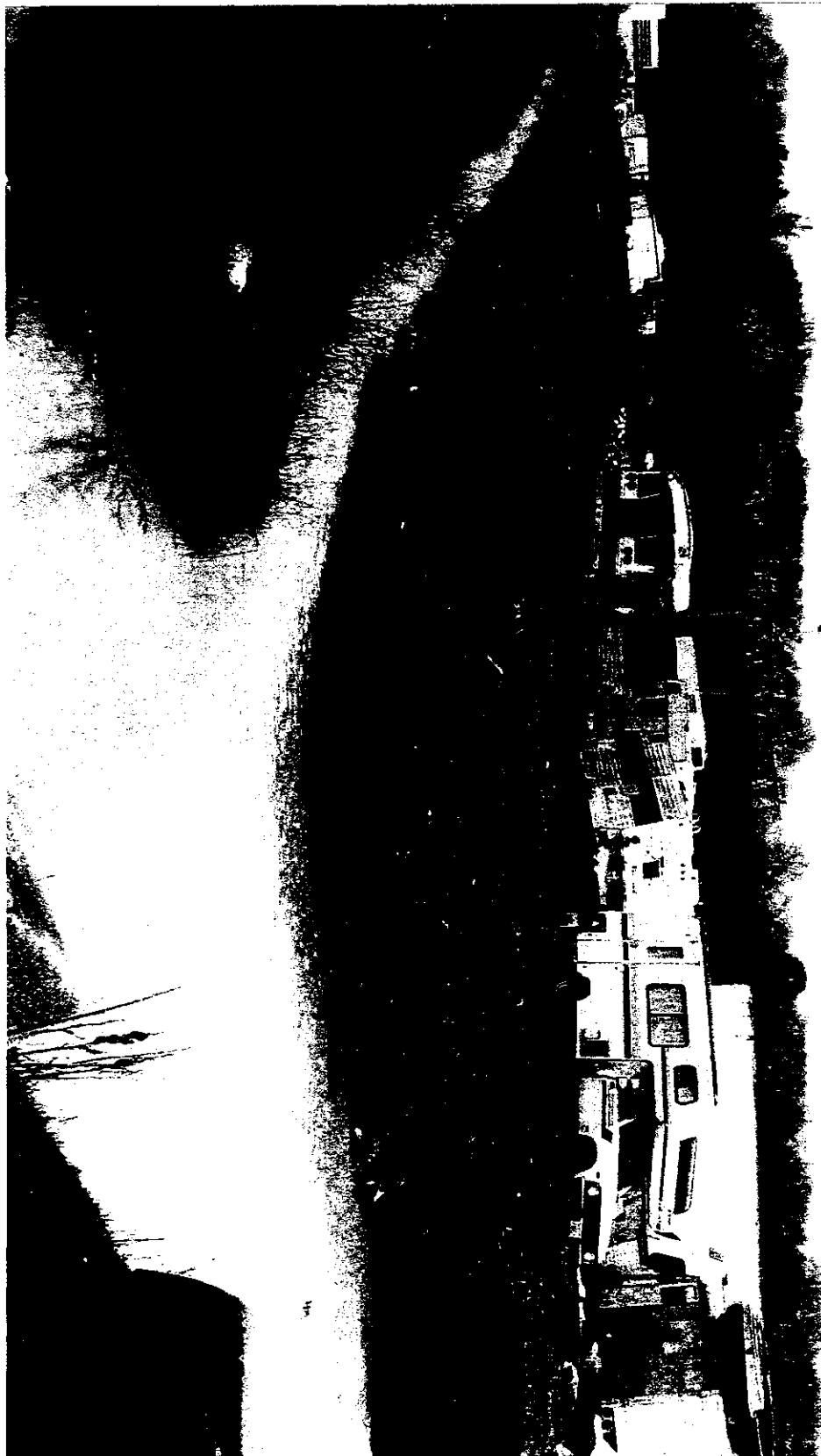


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Exhibit (5) KENNEC INC-UAD and MAYFIELD site  
Assessment January 11,2008



Kennec, Inc.  
765 Baywood drive  
Suite 340  
Petaluma, CA 94954  
Tel: 707.780.8129  
E-Fax: 909.354.3291

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## SITE VISIT MEMORANDUM

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**TO:** DAVID EDMUNDS, MICHAEL BIGGS, AND GEORGE PROVENCHER  
**FROM:** JOAQUIN WRIGHT  
**SUBJECT:** JANUARY 8<sup>TH</sup>, 2008. SITE VISIT TO PINOLEVILLE POMO NATION FOR STORMWATER SAMPLING AND SITE OBSERVATION.  
**DATE:** 1/11/08  
**CC:** DAGAN SHORT

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This memorandum documents a site visit to the Pinoleville Pomo Nation (PPN) by Joaquin Wright of Kennec, Inc. (KENNEC). The purpose of the visit was to examine storm water conditions related to water runoff from industrial activities adjacent to the PPN. As part of the visit, KENNEC collected surface water and soil samples as a preliminary measure in evaluating potential impacts to the PPN property from industrial activity on the adjacent property.

### **SITE VISIT**

KENNEC visited the site on January 8, 2008 to review storm water conditions on the PPN site and an adjacent site. Joaquin Wright, Senior Project Manager and Principal of KENNEC, arrived at approximately 11:30 am. Before the site visit, it had been raining for approximately three days.

### ***Observations***

KENNEC toured the PPN by vehicle and on foot to view the storm water drainage conveyance systems and appurtenances associated with the tribal lands and the local waterway, referred to as Ackerman Creek.

The main industrial activity within the tribal lands (but not owned by the PPN) is a local business, Ukiah Auto Dismantlers (UAD). The assessor's parcel numbers for the UAD where industrial activities were observed to be occurring are APN 168-190-048 (48) and APN 168-190-049 (49). The total area of the two parcels is approximately 10 acres. The UAD operation is adjacent to and north of the Tribal Headquarters/Head Start School Facility and between Pinoleville Drive and Ackerman Creek.

KENNEC reviewed a description of the area in a Phase II Environmental Investigation dated March 2003 (Vector Engineering Inc.) as well as visually observed conditions on the UAD facility from PPN land adjacent to parcels 48 and 49. Based on our observations, the majority of the storm water runoff associated with parcels 48 and 49 flows across the parcels from south to north and then from west to east, adjacent to a berm that runs the whole length of parcels 47 and 48 in a east west direction, and then discharge onto Parcel 1 and continue to sheet flow over a creek access path onto parcel 2. A drainage pathway from parcels 1 and 2 connects to Akerman Creek at a point located at the approximate Parcel 1 and Parcel 2 boundary, and shows signs of having diverted water to or from the creek in the past during high flow events.

Pinoleville Pomo Nation  
January 14, 2008  
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During our tour of the PPN, KENNEC observed the following conditions with regard to storm water discharge, and the drainage and conveyance system:

1. Discharge from the UAD facility onto the adjacent PPN property had very few visible<sup>1</sup> storm water source and treatment controls. Only one check dam for most of the 10 acres site was seen. The check dam drained via pipes to a pond at the confluence of a drainage pathway running south to north on the eastern side of parcel 47. Water from the pond discharged easterly to parcel 1 on the PPN property. The storm water that flowed through the pipes (from the check dam), appeared to be of relatively high velocity and very "cloudy", indicative of elevated Total Suspended Solids (TSS).
2. Visible operations areas were not on impermeable ground (i.e., paved areas) nor were they covered.
3. One vehicle's motor, in an apparent work area (evident by adjacent toolbox and open motor compartment door), appeared to be under deconstruction/construction. This work area was immediately adjacent to and connected with a drainage pond created by the check dam at the northeasterly edge of the property.
4. At least two large piles of debris were visible. The debris piles, which included metal, soil, and miscellaneous aggregate were surrounded by pools of water that flowed into stormwater drainages. The debris piles were not covered nor were storm water source controls present to prevent movement of contaminants from the debris to the storm water or underlying soil.
5. There were vehicles in various states of disrepair or dismantling, large steel tanks pipes and other vehicular components; all were uncovered and exposed to the elements. There was no clear delineation between storage area or operational working areas.

### ***Sampling Activities***

KENNEC collected six surface water samples on Parcel 1 and Parcel 2 and one soil sample from parcel 1 from a depth of \_\_\_\_ feet. Sample locations were field located with a handheld GPS unit. The samples were delivered to Brelje and Race for analysis, located in Santa Rosa, Ca., in iced coolers under standard Chain-of-Custody procedures. Samples were tested for the following constituents:

- Volatile organic compounds (VOCs) by EPA Method 8260B
- Total petroleum hydrocarbons as diesel and oil
- Heavy Metals

### **INDUSTRY STANDARD FOR AUTO DISMANTLING FACILITIES**

Industrial sites in California must comply with current state and federal storm water regulations that typically require implementation of long- and short-term storm water source and treatment controls. These controls prevent impacts to surface water, to groundwater (through infiltration) and to soil. In addition, all industrial sites are required to have an updated Storm Water Pollution Prevention Plan (SWPPP) that specifies appropriate Best Management Practices (BMPs) as well as a monitoring program for documenting and

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<sup>1</sup> Based on observations from PPN Parcel 1.

Pinoleville Pomo Nation  
January 14, 2008  
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identifying whether the BMPs are performing adequately. To give perspective on the industry standard for storm water management and typical BMPs that one would implement at an auto dismantling facility, the following short list from the California Stormwater Quality Association (CASQA), <http://www.cabmphandbooks.com/Industrial.asp>, is provided below:

- SC - 22: Vehicle equipment Repair, covered work area, impervious ground cover, covered storage of vehicles
- TC - 10,11,21,22,30,31,60: Infiltration trench, infiltration basin, constructed wetland, extended detention basin, vegetated swale and buffer strip, multiple systems
- EC - 2,9,10,12: Existing vegetation, drainage swales, velocity dissipation devices, berm and bank stabilization
- SE - 2,3,4,5,8,9,10: Sediment basin, sediment trap, check dams, fiber rolls, straw bale and sandbag barriers, storm drain inlet protection

In addition to these recommendations, we have attached for your review, information on BMPs from a few of the many regional and national auto recycling organizations.

If you have any questions about the information provided in the memorandum, please call. After we receive the laboratory results for the surface water and soil samples, we will compare them to potentially applicable water and soil criteria, and submit this information to you in a technical memorandum.

Sincerely,

**KENNEC, Inc.**

Joaquin Wright  
Senior Project Manager

Attachments: BMPs and literature from auto recycling organizations



Exhibit (6) KENNEC INC-UAD and MAYFIELD site  
Assessment April 10, 2008



Kennec, Inc.  
765 Baywood drive  
Suite 340  
Petaluma, CA 94954  
Tel: 707.780.8129  
E-Fax: 909.354.3291

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## **SITE VISIT MEMORANDUM**

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**TO:** MICHAEL BIGGS  
**FROM:** JOAQUIN WRIGHT  
**SUBJECT:** APRIL 2<sup>ND</sup>, 2008. SITE VISIT TO PINOLEVILLE POMO NATION FOR SEDIMENT/SOIL SAMPLING OF STORMWATER DRAINAGE AREAS AND ACKERMAN CREEK..  
**DATE:** 4/10/08  
**CC:** DAGAN SHORT

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This memorandum documents a site visit to the Pinoleville Pomo Nation (PPN) by Andrew Murphy of Kennec, Inc. (KENNEC) on April 2<sup>nd</sup> of 2008. The purpose of the visit was to perform soil and sediment sampling at predetermined general areas within stormwater drainage areas and Ackerman Creek. This sampling event was performed at the request of the PPM to further evaluate the potential impacts to the PPN property from industrial activity on the adjacent property.

### **SITE DESCRIPTION**

The main industrial activity within the tribal lands (but not owned by the PPN) is a local business, Ukiah Auto Dismantlers (UAD). The assessor's parcel numbers (APN) for the UAD where industrial activities were previously observed and document to be occurring are APN 168-190-048 (48) and APN 168-190-049 (49) (hereafter referred to as parcel 47, 48, etc.). The total area of the two parcels is approximately 10 acres. The UAD's operations are adjacent to and north of the Tribal Headquarters/Head Start School Facility and between Pinoleville Drive and Ackerman Creek, and are directly adjacent to parcel 47 to the east and parcel 50 to the south. From east to west, the parcels are 49, 48, 47, 1, and 2.

### **SITE VISIT**

KENNEC visited the site to perform soil and sediment sampling within stormwater drainage areas that are directly adjacent to the UAD and the stream that flows through the PPN, Ackerman Creek, that is believed to be the receiving waters for stormwater flow from the UAD. Andrew Murphy, Senior Project Engineer for KENNEC, arrived at approximately 1:00 pm and completed sampling activities at approximately 7:00 pm..

### **OBSERVATIONS**

Pinoleville Pomo Nation  
April 10, 2008  
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The weather at time of arrival was partly sunny and warm. The stormwater drainage areas adjacent to the UAD were dry and Ackerman Creek was flowing with an approximated maximum depth of 1.5 feet.

Based on previously documented observations and those made during this site visit, the majority of the storm water runoff associated with parcel 48 and 49 flows across the parcels from south to north and then from west to east in a drainage area adjacent to a manmade berm constructed along Ackerman Creek. The berm and drainage area are continuous for the entire width of parcels 48, 47, and 1. There is an access pathway constructed between parcels 1 and 2 in which the berm elevation is substantially lower. The access pathway includes a culvert to allow stormwater flow towards the east. At the time of this site visit it was observed that the culvert appeared to be mostly clogged with debris. The berm within parcel 2 appears to be continuous; however, it appears that the drainage area along the berm terminates on parcel 2 due to an increase in elevation to the east. This is apparent by observable high water mark deposition of debris (wood, plastic containers, etc.) in the near area of the pathway on parcel 1 and 2. These signs may indicate that stormwater was diverted to or from the creek in the past during high flow events through the lower elevation in the berm.

Based on conversations with PPN and observable indications (i.e. debris and fine sediments) some stormwater from the UAD's operations area pools in an area outside their area to the south of the south east corner of parcel 48 on parcel 50.

### **SAMPLING ACTIVITIES**

KENNEC collected nine samples during the event. Three samples were collected from within the dry stormwater drainage area adjacent to the berm in parcel 1 and 2; one sample was collected on the stream side of the access pathway; one sample was collected from within the dry channel of Ackerman Creek; three samples were collected from the flowing channel of Ackerman Creek; and one sample was collected from parcel 50 to the south of the south east corner of parcel 48. The sample locations were document using a handheld GPS and with photos. Descriptions of the sampling locations are as follows:

- Sample 1 (SS1-040208) was collected from what appeared to be the center of the dry drainage area channel along the berm in parcel 1 approximately 45 feet to the west of the access pathway.
- Sample 2 (SS2-040208) was collected from beneath debris apparently deposited during high water events on the west side of the access pathway to the north of the culvert on parcel 1.
- Sample 3 (SS3-040208) was collected from what appeared to be the center of the dry drainage way/pool next to the berm on parcel 2.

Pinoleville Pomo Nation

April 10, 2008

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- Sample 4 (SS4-040208) was collected from the dry sediments/soil on the north east side of the access pathway where indications of water flow in the dry channel of Ackerman Creek were observed.
- Sample 5 (SS5-040208) was collected from Ackerman Creek Sediments within the southernmost dry channel a couple hundred feet to the west of the access pathway between parcel 1 and 2, upstream.
- Sample 6 (SS6-040208) was collected from Ackerman Creek sediments at what appeared to be the confluence of the two channels. The northernmost is still flowing while the southernmost is dry on the surface.
- Sample 7 (SS7-040208) was collected from Ackerman Creek sediments to the north of the deepest channel flow downstream of Sample 6.
- Sample 8 (SS8-040208) was collected from a standing pool south of the flowing channel but at a similar downstream distance from Sample 6.

The methodologies used for collecting samples were as follows:

- Samples 1 through 5 and 9 are composite samples collected from the surface to a maximum depth of approximately six inches below ground surface (bgs) using a stainless steel spade to place soil into a stainless steel bowl. The soil was then mixed until it appeared to be uniform in consistency using a stainless steel spoon and then after rinsing and drying the spoon sample material was transferred into a 12 ounce jar filled to minimize head space. The sampling equipment was then brushed off washed with a dilute solution of isopropyl alcohol twice and then rinsed with deionized water and dried.
- Samples 6 through 8 were collected by a driven tube method. A washed and rinsed two inch diameter section of PVC pipe with 3 inch increments marked on the side was driven to a depth of 9 to twelve inches below the sediment surface. The approximate depth of water and the depth of the sample were recorded. To extract the sample the pipe was filled with stream water and capped. The pipe was slowly extracted until the lower end was exposed. When exposed it was capped and the sample was transported carefully to the where it would be composited. The water was drained by cutting a small slot in the pipe above the sample depth. The contents was then transferred into a stainless steel bowl and composited and transferred into 12 ounce sample jars using the same method describe above.

The samples were delivered to Brelje and Race Laboratories, Inc. in Santa Rosa, California on morning of April 3<sup>rd</sup> in an iced cooler under standard chain-of-custody procedures. Samples were submitted for total petroleum hydrocarbon (diesel and oil range) and metal analysis.

Pinoleville Pomo Nation  
April 10, 2008  
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Sincerely,

**KENNEC, Inc.**

Joaquin Wright  
Senior Project Manager

A handwritten signature in black ink, appearing to read 'J. Wright', is written over the printed name and title.

KENNEC, INC.

BRELJE AND RACE



LABORATORIES, INC.

425 SOUTH E STREET • SANTA ROSA, CALIFORNIA 95404 • (707) 544-8807

April 17, 2008

Sample Collected: 04/03/08  
Sample Received: 04/03/08  
Collected By : AM

Kennec  
235 East Broadway  
Long Beach, CA. 90802  
Attention: Joaquin Wright

LOG NUMBER	Sample Description	Metals mg/Kg
408-7435	SS1-040208	Please see attached Reports
408-7436	SS2-040208	
408-7437	SS3-040208	
408-7438	SS4-040208	
408-7439	SS5-040208	
408-7440	SS6-040208	
408-7441	SS7-040208	
408-7442	SS8-040208	
408-7443	SS9-040208	

Analyses performed by approved outside laboratories.

VERY TRULY YOURS,

BRELJE AND RACE LABORATORIES, INC.

ANN HILL, LABORATORY MANAGER

AH:ljc

BRELJE AND RACE



LABORATORIES, INC.

425 SOUTH E STREET • SANTA ROSA, CALIFORNIA 95404 • (707) 544-8807

April 17, 2008

Sample Collected: 04/03/08  
 Sample Received: 04/03/08  
 Collected By : AM

Kennec  
 235 East Broadway  
 Long Beach, CA. 90802  
 Attention: Joaquin Wright

LOG NUMBER	Sample Description	TPH – Diesel & TPH – Motor Oil mg/Kg
408-7435	SS1-040208	Please see attached Reports
408-7436	SS2-040208	
408-7437	SS3-040208	
408-7438	SS4-040208	
408-7439	SS5-040208	
408-7440	SS6-040208	
408-7441	SS7-040208	
408-7442	SS8-040208	
408-7443	SS9-040208	

Analyses performed by approved outside laboratories.


VERY TRULY YOURS,


BRELJE AND RACE LABORATORIES, INC.


ANN HILL, LABORATORY MANAGER

AH:ljc



 <b>McC Campbell Analytical, Inc.</b> "When Quality Counts"		1534 Willow Pass Road, Pittsburg, CA 94565-1701 Web: www.mcccampbell.com E-mail: main@mcccampbell.com Telephone: 877-252-9262 Fax: 925-252-9269				
Brelje & Race Labs., Inc.  425 South E Street  Santa Rosa, CA 95404		Client Project ID: #408-7435,36,37,38,39,40,41,42,43  Client Contact: Ann Hill  Client P.O.:		Date Sampled: 04/02/08  Date Received: 04/04/08  Date Extracted: 04/04/08  Date Analyzed: 04/07/08-04/08/08		
<b>Metals*</b>						
Lab ID	0804133-001A	0804133-002A	0804133-003A	0804133-004A	Reporting Limit for DF = 1: ND means not detected above the reporting limit	
Client ID	408-7435	408-7436	408-7437	408-7438		
Matrix	S	S	S	S	S/SLUDGE	W
Extraction Type	TOTAL	TOTAL	TOTAL	TOTAL	mg/kg	mg/L
<b>ICP-MS Metals, Concentration*</b>						
Analytical Method: 6020A		Extraction Method: SW3050B/SW3050B		Work Order: 0804133		
Dilution Factor	1	1	1	1	1	1
Antimony	0.82	0.54	1.5	ND	0.5	NA
Arsenic	5.8	6.0	8.3	5.2	0.5	NA
Barium	170	160	250	140	5.0	NA
Beryllium	ND	ND	0.64	ND	0.5	NA
Cadmium	1.4	0.42	2.5	ND	0.25	NA
Chromium	110	82	110	78	0.5	NA
Copper	41	30	72	20	0.5	NA
Lead	51	24	160	6.0	0.5	NA
Mercury	0.13	0.065	0.20	ND	0.05	NA
Nickel	110	98	130	97	0.5	NA
Selenium	ND	ND	ND	ND	0.5	NA
Silver	ND	ND	ND	ND	0.5	NA
Thallium	ND	ND	ND	ND	0.5	NA
Vanadium	57	49	71	43	0.5	NA
Zinc	160	100	560	46	5.0	NA
%SS:	98	98	95	97		
<b>Comments</b>						
*water samples are reported in µg/L, product/oil/non-aqueous liquid samples and all TCLP / STLC / DISTLC / SPLP extracts are reported in mg/L, soil/sludge/solid samples in mg/kg, wipe samples in µg/wipe, filter samples in µg/filter.  # means surrogate diluted out of range; ND means not detected above the reporting limit; N/A means not applicable to this sample or instrument  J) analyte detected between reporting limits (RLs) and method detection limits (MDLs).  TOTAL = acid digestion. WET = Waste Extraction Test (STLC). DI WET = Waste Extraction Test using de-ionized water.  i) aqueous sample containing greater than ~1 vol. % sediment; for DISSOLVED metals, this sample has been preserved prior to filtration; for TOTAL metals, a representative sediment-water mixture was digested. j) reporting limit raised due to insufficient sample amount; k) reporting limit raised due to matrix interference; m) estimated value due to low/high surrogate recovery; n) results are reported on a dry weight basis, p) see attached narrative.						

 <b>McC Campbell Analytical, Inc.</b> "When Quality Counts"		1534 Willow Pass Road, Pittsburg, CA 94565-1701 Web: www.mcccampbell.com E-mail: main@mcccampbell.com Telephone: 877-252-9262 Fax: 925-252-9269				
Breje & Race Labs., Inc.  425 South E. Street  Santa Rosa, CA 95404		Client Project ID: #408-7435,36,37,38,39,40,41,42,43  Client Contact: Ann Hill  Client P.O.:				
		Date Sampled: 04/02/08 Date Received: 04/04/08 Date Extracted: 04/04/08 Date Analyzed: 04/07/08-04/08/08				
<b>Metals*</b>						
Lab ID	0804133-005A	0804133-006A	0804133-007A	0804133-008A	Reporting Limit for DF =1; ND means not detected above the reporting limit	
Client ID	408-7439	408-7440	408-7441	408-7442		
Matrix	S	SLUDGE	SLUDGE	SLUDGE	S/SLUDGE	W
Extraction Type	TOTAL	TOTAL	TOTAL	TOTAL	mg/kg	mg/L
<b>ICP-MS Metals, Concentration*</b>						
Analytical Method: 6020A		Extraction Method: SW3050B/SW3050B			Work Order: 0804133	
Dilution Factor	1	1	1	1	1	1
Antimony	ND	ND	ND	ND	0.5	NA
Arsenic	6.3	4.5	4.1	4.3	0.5	NA
Barium	130	95	80	120	5.0	NA
Beryllium	ND	ND	ND	ND	0.5	NA
Cadmium	ND	ND	ND	ND	0.25	NA
Chromium	110	72	48	71	0.5	NA
Copper	24	16	18	20	0.5	NA
Lead	7.4	4.8	4.7	4.0	0.5	NA
Mercury	ND	ND	ND	ND	0.05	NA
Nickel	120	77	59	73	0.5	NA
Selenium	ND	ND	ND	ND	0.5	NA
Silver	ND	ND	ND	ND	0.5	NA
Thallium	ND	ND	ND	ND	0.5	NA
Vanadium	51	39	32	41	0.5	NA
Zinc	54	42	40	43	5.0	NA
%SS	98	98	96	95		
<b>Comments</b>						
*water samples are reported in µg/L, product/oil/non-aqueous liquid samples and all TCLP / STLC / DISTLC / SPLP extracts are reported in mg/L, soil/sludge/solid samples in mg/kg, wipe samples in µg/wipe, filter samples in µg/filter.  # means surrogate diluted out of range; ND means not detected above the reporting limit; N/A means not applicable to this sample or instrument  J) analyte detected between reporting limits (RLs) and method detection limits (MDLs).  TOTAL = acid digestion. WET = Waste Extraction Test (STLC). DI WET = Waste Extraction Test using de-ionized water.  i) aqueous sample containing greater than ~1 vol. % sediment; for DISSOLVED metals, this sample has been preserved prior to filtration; for TOTAL metals, a representative sediment-water mixture was digested; j) reporting limit raised due to insufficient sample amount; k) reporting limit raised due to matrix interference; m) estimated value due to low/high surrogate recovery; n) results are reported on a dry weight basis; p) see attached narrative.						

 <b>McC Campbell Analytical, Inc.</b> "When Quality Counts"		1534 Willow Pass Road, Pittsburg, CA 94565-1701 Web: www.mcccampbell.com E-mail: main@mcccampbell.com Telephone: 877-252-9262 Fax: 925-252-9269			
Brelje & Race Labs., Inc.  425 South E Street  Santa Rosa, CA 95404		Client Project ID: #408-7435,36,37,38,39,40,41,42,43		Date Sampled: 04/02/08	
		Client Contact: Ann Hill		Date Received: 04/04/08	
		Client P.O.:		Date Extracted: 04/04/08	
				Date Analyzed: 04/07/08-04/08/08	
<b>Metals*</b>					
Lab ID	0804133-009A				Reporting Limit for DF = 1: ND means not detected above the reporting limit
Client ID	408-7443				
Matrix	S				S/SLUDGE W
Extraction Type	TOTAL				mg/kg mg/L
<b>ICP-MS Metals, Concentration*</b>					
Analytical Method: 6020A		Extraction Method: SW3050B/SW3050B		Work Order: 0804133	
Dilution Factor	1			1	1
Antimony	0.55			0.5	NA
Arsenic	5.9			0.5	NA
Barium	150			5.0	NA
Beryllium	ND			0.5	NA
Cadmium	ND			0.25	NA
Chromium	79			0.5	NA
Copper	26			0.5	NA
Lead	16			0.5	NA
Mercury	ND			0.05	NA
Nickel	94			0.5	NA
Selenium	ND			0.5	NA
Silver	ND			0.5	NA
Thallium	ND			0.5	NA
Vanadium	49			0.5	NA
Zinc	69			5.0	NA
%SS:	99				
<b>Comments</b>					
*water samples are reported in µg/L, product/oil/non-aqueous liquid samples and all TCLP / STLC / DISTLC / SPLP extracts are reported in mg/L, soil/sludge/solid samples in mg/kg, wipe samples in µg/wipe, filter samples in µg/filter.  # means surrogate diluted out of range; ND means not detected above the reporting limit; N/A means not applicable to this sample or instrument.  J) analyte detected between reporting limits (RLs) and method detection limits (MDLs).  TOTAL = acid digestion. WET = Waste Extraction Test (STLC). DI WET = Waste Extraction Test using de-ionized water.  i) aqueous sample containing greater than ~1 vol. % sediment; for DISSOLVED metals, this sample has been preserved prior to filtration, for TOTAL metals, a representative sediment-water mixture was digested; j) reporting limit raised due to insufficient sample amount; k) reporting limit raised due to matrix interference; m) estimated value due to low/high surrogate recovery; n) results are reported on a dry weight basis, p) see attached narrative.					

[illegible]

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

- - - - -

PINOLEVILLE POMO NATION,  
PINOLEVILLE POMO NATION  
ENVIRONMENTAL ASSOCIATION,  
and LEONA WILLIAMS,

Plaintiffs,

vs.

No. C 07 2648 SI

UKIAH AUTO DISMANTLERS,  
WAYNE HUNT, ISABEL  
LEWRIGHT, WARRIOR  
INDUSTRIES, INC., RICHARD  
MAYFIELD, ROSS JUNIOR  
MAYFIELD, PAULA MAYFIELD,  
KENNETH HUNT, U.S. ALCHEMY  
CORP., and DOES 1-50,  
inclusive,

Defendants.

- - - - -

DEPOSITION OF RICHARD AZEVEDO, P.E.

Held at the Offices of Biggs Law, PC

765 Baywood, Petaluma, California

Tuesday, February 26, 2008, 10:30 a.m.

- - - - -

**Verbatim** ■

A COMPUTERIZED REPORTING SERVICE  
(707) 575-1819 • (800) 634-4311 • FAX (707) 575-8541

1 your office to be able to make that visit?

2 A. The general stormwater permit, which is issued  
3 to the facility, has a provision that allows the  
4 Regional Board and EPA access to the facility and its  
5 records to conduct inspections.

6 Q. And what was the purpose of your visit?

7 A. Well, we were responding to the complaint  
8 about off-site discharge of oily material and auto  
9 wrecker debris, so we inspected the facility in that  
10 regard and for general compliance with the provisions of  
11 the industrial stormwater permit as well as our basin  
12 plan.

13 Q. Now, you told us you spent several hours at  
14 the site, and I'd like to ask you, as you began this  
15 inspection, did you see any practices or conditions that  
16 were out of compliance with the general stormwater  
17 permit?

18 MR. NEARY: Objection, compound.

19 BY MR. BIGGS:

20 Q. I'll rephrase. When you began your  
21 inspection, did you see any violations?

22 A. Yes.

23 Q. And in sequence from the very first violation  
24 that you saw, could you tell us about the violations  
25 that you saw?

**Verbatim** ■

1 A. I could describe them in general categories.

2 Q. Okay.

3 A. The permit requires a certain level of  
4 paperwork be maintained on-site, the Stormwater  
5 Pollution Prevention Plan annual records, that was  
6 generally lacking. The pollution -- permit requires  
7 that the facility implement best management practices to  
8 prevent or minimize pollution generation and then some  
9 type of pollution treatment or controls prior to  
10 stormwater leaving the site. The facility really did  
11 not implement proper best management practices in either  
12 category, and as a result of that, we saw several  
13 examples of oil and grease on the ground, practices that  
14 would lead to oil and grease on the ground, which would  
15 then become entrained in the stormwater. And so we saw  
16 evidence of oil and grease deposits across the site as  
17 well as poor best management practices being  
18 implemented. All of those would be violations of the  
19 permit.

20 Q. With regard to oil and grease on the ground,  
21 did you happen to notice if any of this subject oil and  
22 grease was on asphalt?

23 A. Most of the site is bare ground. I don't  
24 really recall if there was any asphalt.

25 Q. And with regard to this subject oil and grease

**Verbatim** ■



1 that you saw at this time, as you've described, were you  
2 able to ascertain the source of any oil and grease?

3 A. Well, the source -- that calls for a little  
4 supposition. You see oil and grease on the ground, you  
5 see how the facility's operated, and you draw  
6 conclusions about what might be causing that. So to  
7 answer that question, the evaluation of the site would  
8 indicate it's the operational practices and the lack of  
9 best management practices that would cause that oil and  
10 grease to be on the ground and not contained.

11 Q. Did you see any evidence of oil and grease  
12 pooling on the property?

13 A. What we saw was oil sheens on puddles that --  
14 as I said, the facility is basically dirt, so there  
15 would be ruts and uneven ground, and in some of those  
16 ruts there would be puddles of water, there would be a  
17 sheen on that. There was apparently oil and grease on  
18 the surface that was somewhat emulsified. We did not  
19 see pools of oil, so to speak. What we saw were sheens  
20 of oil where oil had ponded on water and water had  
21 either left the site or percolated in, so there was a  
22 bathtub ring, so to speak.

23 Q. With regard to water leaving the site, could  
24 you ascertain where the water was going?

25 A. The drainage is fairly clear at that site, it

**Verbatim** ■

1 seemed. It seemed that most of the water would end up  
2 along the levy, along Ackerman Creek, and then it  
3 appears to flow off-site to the west to the neighbor's  
4 property along the levy. We didn't -- we were not there  
5 during a rain storm, so we couldn't ascertain if there  
6 were any other areas where it would leave the site.

7 Q. With regard to the sheen that you've  
8 described, and with regard to Ackerman Creek, were you  
9 able to ascertain how many yards away Ackerman Creek was  
10 from the oil sheen?

11 A. It varied. There were oil sheens across the  
12 site or in various locations of the site, so it could  
13 have ranged from right next to the levy which separates  
14 Ackerman Creek from the facility to as far away as the  
15 back of the main building on Wayne Hunt's property,  
16 which would be several hundred feet.

17 Q. Were you able to ascertain the yardage between  
18 the levy and Ackerman Creek?

19 A. I don't think we made an estimate of that. We  
20 stood on the levy and could look down and see the creek  
21 down the bank. We didn't actually ascertain the  
22 distance. It's fairly close.

23 Q. Thank you. With regard to your testimony that  
24 water was, I believe -- correct me if I'm wrong, I think  
25 you said that in addition to water running off the

**Verbatim** ■

1 property, some water was percolating into the soil?

2 A. The soil at the site is -- basically appears  
3 to be on the alluvial, a-l-l-u-v-i-a-l, flood plain  
4 deposit, which is generally sand and gravel and fine  
5 material. It has a reasonably high percolation rate,  
6 and you would expect, just from knowing a bit about the  
7 percolation permeability and soil types, that some of  
8 the water would have infiltrated into the soil as well  
9 as runoff via the surface drainage.

10 Q. Did you have an occasion at this time to  
11 inspect what I would describe as the Mayfield property  
12 at this time in this January 2006 inspection?

13 A. Yes.

14 Q. And what did you see on the Mayfield property?

15 A. The Mayfield property is adjacent to the auto  
16 wreckers and also bounded on the west side by the tribe.  
17 I would describe it as a general engineering  
18 construction company. What we saw on-site was  
19 consistent with that. They had fuel storage that was  
20 not contained. The car crusher that belonged to Wayne  
21 Hunt was on the Mayfield property at the time. There  
22 were numerous cars being stored on the Mayfield property  
23 as well as, I guess you could call it salvage and bits  
24 and debris of auto parts and things like that.

25 Q. Did you observe any violation on the Mayfield

**Verbatim** ■

1 property?

2 A. Yes, I think so.

3 Q. Can you elaborate, please?

4 A. Well, the car crusher -- excuse me, the car  
5 crusher appeared to be leaking oil and grease onto the  
6 ground. There was definitely oil and material around  
7 the car crusher. The fueling locations for the Mayfield  
8 business were not contained in terms of secondary  
9 containment. And there were quite a few cars on-site.  
10 We were -- we went along the back of a levy, and we  
11 could see -- would be the northeast -- northeast corner  
12 of the property along the levy before the water  
13 discharged, and then the tribe, a large scour pit that  
14 had a bathtub ring of oil in it. So there would have  
15 been a lot of oil carried back to that point, was the  
16 evaluation.

17 Q. Could you elaborate on what you mean by  
18 "carried back to that point"?

19 A. Most of the site appears to be graded towards  
20 the levy, so the surface water that would flow onto the  
21 site or off of it, across the site appeared to flow back  
22 toward the levy, and then the water appeared to flow  
23 from west to east along the levy from the Mayfield  
24 property onto the tribe. So the northeast corner  
25 appeared to be where water was concentrating and

**Verbatim** ■

1 scouring and leaving the site.

2 Q. Can you define what you mean by scouring?

3 A. Scouring would be the energy in the water  
4 actually eroding soil and digging soil up and eroding  
5 soil. So you could use the term, the water eroded some  
6 of the soil. Generally, you can also say it scoured,  
7 which is to scour out or to dig out.

8 Q. You had mentioned runoff onto tribal lands.  
9 Can you elaborate as to your observations as to that?

10 A. Well, as I said, it appeared most of the  
11 drainage flowed from the front toward the back of the  
12 facility to the levy along Ackerman Creek, and then  
13 west -- was directed west to east from the Mayfield  
14 property. Then the natural drainage appeared to drain  
15 onto the tribal property along the levy.

16 So what we observed -- we stopped at the fence  
17 line on the Mayfield property. We didn't enter onto the  
18 tribal property, we didn't have permission or a tribal  
19 representative, but what we saw was discharge from the  
20 Mayfield property entering onto tribal property at that  
21 time, at that point in time, we could see some debris in  
22 terms of drums on the tribal property from that vantage  
23 point.

24 Q. At that time while you were at that vantage  
25 point, were you able to ascertain the point source of

**Verbatim** ■

1 where that drainage was originating from in the first  
2 place?

3 A. No. Rainfall is generally not considered a  
4 point source unless it's directed into a ditch or a  
5 culvert. So there is road runoff from the Pinoleville  
6 Road and above it that apparently flooded onto the site,  
7 and that would have commingled with rainfall that  
8 drained into the back, so there was no point, so to  
9 speak, across the site until it reached the drainage  
10 ditch along the levy on the tribal property.

11 Q. Were you able to ascertain if any of the water  
12 could have been flowing from UAD on to Mayfield  
13 property?

14 A. It appeared that the natural drainage along  
15 the levy was from west to east, so it would go from UAD  
16 across Mr. Mayfield's property and continue on to tribal  
17 property.

18 Q. Did you at this time, from this vantage point,  
19 observe any, what you described earlier as sheen on the  
20 water while it was on the Mayfield property?

21 A. Yes.

22 Q. Can you elaborate on that, please?

23 A. Along the back of the facility at the Ackerman  
24 levy at the fence line between Mayfield and tribal  
25 property was a scour hole. The water had dug out a hole

**Verbatim** ■

1 there, and you can see there was a small amount of water  
2 flowing along the levy coming into that. You could see  
3 some oil and sheen on that, and I would have to check my  
4 notes to see if there was a sheen across other areas of  
5 the property. I don't want to confuse the general  
6 inspection with the follow-up inspection, but we did see  
7 additional sheens on the Mayfield property, I believe.

8 Q. We can just do one inspection at a time to  
9 keep things clear.

10 A. I actually don't recall because the  
11 inspections were so close together, I'd probably have to  
12 refer to my notes to see what else I had reported as far  
13 as observations.

14 Q. Okay. Well, right now, if we may, let's stay  
15 where you're describing, you know, this vantage point.  
16 I think you said that you walked over onto the Mayfield  
17 property, you were looking around. You just referred to  
18 the scour hole. Do you recollect approximately the  
19 yardage the scour hole was from Ackerman Creek?

20 A. Well, the scour hole was roughly at the base  
21 of the levy, and the levy separates Ackerman Creek from  
22 the Mayfield property, and we did not make an estimate.  
23 What I would tell you is the hole was at the base of the  
24 levy, and Ackerman Creek was fairly close to the levy on  
25 the back side, so it would be -- we could make some

**Verbatim** ■

1 estimates of less than a hundred feet probably, even  
2 closer than, but we did not measure it at the time.

3 Q. Do you recall about how deep this hole was?

4 A. No.

5 Q. Do you recall if you saw any sheen in that  
6 hole?

7 A. What we did see was, let's use the analogy of  
8 a bathtub, just use the scour hole as a bathtub. What  
9 we saw was a bathtub ring of oil in the scour hole, so  
10 the water entering along the levy had a little bit of  
11 sheen on it, but what we did see really markedly was  
12 this bathtub ring of oil in the scour hole from a  
13 previous -- probably during the storm, was deposited in  
14 there and was deposited in the soil and the water  
15 receded somehow.

16 Q. Thank you. A little bit earlier, with regard  
17 to this visit, you mentioned best management practices.  
18 Can you elaborate on your observations at this time of  
19 any inadequate best management practices?

20 A. The general operation as a whole appeared  
21 substandard in terms of best management practices.

22 To give you an overview, cars are brought in,  
23 either wrecked cars or police impounds, and they're  
24 brought in and stored, so paperwork is processed or  
25 impounds paid. They're stored in the yard reportedly

**Verbatim** ■



1 until they're crushed.

2 If you look at the BMP's for preventing oil,  
3 like, from impounded or wrecked cars, there were  
4 essentially none. There were hoods missing off the  
5 cars, which exposes the engine block and things to rain.  
6 The auto industry generally recommends that the hoods  
7 are on the cars or a tarp placed over the cars. The  
8 cars were outdoors on bare ground, which is essentially  
9 no BMP's.

10 We do not know how the fluids were drained, we  
11 never watched that, but the facility reported they just  
12 would use a small tote or bin and drain them out and  
13 carry off the oil to the hazardous waste storage area.  
14 So all in all, the best management practices were really  
15 lacking, which was fairly very noticeable in the general  
16 context.

17 Q. At this time on this inspection, did you ask  
18 any UAD employees to produce written or file  
19 documentation that went to stormwater permits?

20 A. I would have to check my notes. I believe I  
21 would have to check my notes.

22 Q. At this time, do you recall if you ever asked  
23 any UAD employees to produce a sweet pea?

24 THE REPORTER: A what?

25 THE WITNESS: It's a Stormwater Pollution

**Verbatim** ■

1 the proposed existing building is needed to process  
2 autos." First I want to ask you, do you have any  
3 knowledge as to whether they've complied with that?

4 A. They have not.

5 Q. And what was the reason for your office  
6 insisting that they provide an additional concrete base  
7 from the gate?

8 A. Well, during the January and February  
9 inspections, it was clear that they were processing  
10 autos off the crusher on bare dirt. They were changing  
11 fluids and taking parts out. We could see parts stored  
12 around the building, on the ground, covered with tarps.  
13 People would bring in -- the description by the owner  
14 was people would just sometimes bring in cars and drop  
15 them at the front gate. It was really apparent that  
16 they needed to contain the crusher operation, but they  
17 also needed someplace where they could actually work,  
18 process autos, dismantle, store a car on some type of  
19 asphalt or concrete base where then they could control  
20 spills and they could observe spills and things like  
21 that. So that was our very leading type of suggestion  
22 to them as the building itself was not sufficient to  
23 provide proper operation.

24 Q. Anything further on that point?

25 A. No.

**Verbatim** ■

1 Q. Okay. Thank you. Next sentence: "Relocating  
2 the hazardous waste storage to the new building and  
3 using existing building for other storage is  
4 recommended." What was your reasoning with regard to  
5 that?

6 A. Well, the new building that they were  
7 proposing was 50 to 100 feet from the existing hazardous  
8 waste storage building. So if you were to drain fluids,  
9 you'd have to somehow tote them across the yard, which  
10 they were doing in buckets at that point in time. It  
11 makes a lot more sense from an efficiency standpoint and  
12 potential for preventing spills to have the hazardous  
13 waste storage in or adjacent to the crusher building, so  
14 you simply go from that point to 20, 15 feet across the  
15 facility, never go out of the facility, out in the rain,  
16 tote buckets around. So our recommendation was to  
17 consolidate those two areas together. It would be  
18 better for their operation.

19 Q. Anything further on that point?

20 A. No.

21 MR. BIGGS: How you holding up? You want to  
22 get something to eat?

23 THE WITNESS: We're going to get something to  
24 eat pretty quick.

25 MR. BIGGS: Why don't we do that.

**Verbatim** ■

1 what is this aboveground tank you're referring to?

2 A. The facility had roughly a 500-gallon fuel  
3 tank on-site. It was on stilts. It's kind of  
4 traditional to put a tank on stilts five, six feet off  
5 the ground to give enough head to fill your tanks.  
6 However, it was on stilts, there was no secondary  
7 containment for spillage, so it's really appropriate to  
8 take that tank and add an impermeable base and something  
9 around it for spill control in case of problems.

10 They reported the tank was not in use, which 08:22  
11 is the last clause of, if it was in use, but the tank  
12 was not in use at the time. But if they did want to use  
13 it, we were simply reminding them of the requirements to  
14 put a secondary containment on it.

15 Q. Okay, thank you. Referring to number 8,  
16 installation of formal oil-water separators is necessary  
17 in select locations. What are formal oil-water  
18 separators?

19 A. Let's put that in context to the facility.  
20 During January and February, we had oil in the surface 08:23  
21 water running off, and Warden Mauer had them create sort  
22 of an oil-water separator or a way to skim oil off the  
23 surface water, but it was very temporary. It was  
24 earthen-lined, it was made out of hay bales, gravel  
25 pipe. What we want to see is a commercial or a proper

**Verbatim** ■

1 oil-water separator, which is made out of a -- which is  
2 a structure. It has a base, it has side walls, it has a  
3 way to scrape oil/water out. It has a weir, w-e-i-r,  
4 for water to overflow.

5 So when we say formal, that would be as  
6 opposed to the temporary in-ground structure they had  
7 constructed. You could have replaced that with a word  
8 such as "commercial" or "appropriately designed"  
9 structure.

10 And the oil-water separator, I think, is -- 08:24  
11 are you familiar with oil-water separators?

12 Q. Not really. Can you elaborate?

13 A. Generally, they're an open -- they can be an  
14 open-topped container, water flows in, and the oil is  
15 allowed to either sometimes settle at the bottom, if it  
16 has sediment, or it's -- generally oil floats, so it's  
17 meant to take the floating oil off the water before it's  
18 discharged, and then those structures are cleaned out  
19 and the oil removed. They're pretty much a standard  
20 device used where you find oil and water at most 08:25  
21 industries.

22 Q. In your office's order on abatement of  
23 March 2006, was a reference made to lack of oil-water  
24 separators?

25 A. Would you repeat that while I take a look at

**Verbatim** ■

1 this.

2 Q. In reference to your office's order and  
3 abatement and cleanup of March 2006, was any reference  
4 made to the lack of oil-water separators or inadequate  
5 oil-water separators?

6 MR. NEARY: Just for the record, I want to  
7 object as asked and answered.

8 BY MR. BIGGS:

9 Q. You may answer the question.

10 A. Okay. The short-term abatement, A-1-A,  
11 requested the installation of temporary lined oil-water  
12 separators or equivalent, and I don't actually see where  
13 we require oil-water separators in the long-term  
14 abatement. However, when we're talking about item B-1,  
15 which is capital and operational improvements designed  
16 to prevent discharge, oil-water separators are pretty  
17 standard BMP, so they would be used as needed at the  
18 facility.

19 Q. Okay, thank you. At this time, does your  
20 office have any information as to whether or not UAD has  
21 installed formal oil-water separators?

22 A. The oil-water separator that we had negotiated  
23 with UAD was meant to capture the runoff from the  
24 asphalt pad around the crusher building. The asphalt  
25 has not been installed, so the oil-water separator has

**Verbatim** ■

1 and is still in there. It was moved from one location  
2 to another?

3 A. Yes.

4 Q. Now, in this memorandum, I'll call it, of  
5 May 24th, '06, you stated essentially, "Our review  
6 indicates that UAD needs more parts storage, more  
7 impermeable base and stormwater treatment units such as  
8 oil-water separators and operational BMP's." Is that  
9 correct?

10 A. Yes.

04:25

11 Q. Now, isn't it just true that you testified as  
12 to the content of a memorandum dated May of '07, and you  
13 were asking UAD to perform the same tasks?

14 A. Let's take a look at that.

15 The May '07 letter was specifically geared  
16 toward the sample results that they had sent in, and we  
17 were responding specifically to the sample results that  
18 were taken in and around the collection pond. That's  
19 May of '07.

20 Now, this inspection, which was May of '06, we  
21 had not received what we considered a final report from  
22 UAD under the terms of cleanup and abatement order, and  
23 they had not really formalized everything that they had  
24 wanted to do. We're making observations that they still  
25 need parts storage, impermeable working surface,

04:26

**Verbatim** ■

1 stormwater treatment.

2 You have to remember that our first inspection  
3 was January, February, and this is in May, so we had  
4 just received a preliminary report in April, so very  
5 little work had been done on-site beyond the interim  
6 cleanup and removing cars and oily waste and drums and  
7 things like that. We had not approved a final long-term  
8 solution or, excuse me, just a long-term solution, nor  
9 had they begun to implement it.

10 Q. Isn't it true in the order on abatement and 04:27  
11 cleanup, there's a section in there that addresses  
12 long-term solution?

13 A. Yes.

14 Q. I am having difficulty locating that  
15 correspondence from May of '07. I'm kind of shuffling  
16 papers around here. Does somebody have an extra copy?

17 MS. NIEMEYER: Which one, the one we just  
18 looked at?

19 MR. BIGGS: It would be No. 11, I believe, or  
20 12. May of '07. 04:28

21 Thank you.

22 MR. HERB: You may want to wind it up.

23 MR. BIGGS: We're going to conclude in a  
24 minute.

25 Q. May I direct your attention back to the letter

**Verbatim** ■



1 of May of '07, specifically paragraph number 4. And do  
2 you see in the last sentence the statement there  
3 beginning, "or other BMP's and how they will discharge,"  
4 BMP's referring to best management practices?

5 A. Uh-huh, yes.

6 Q. Wouldn't it be accurate to say that with  
7 regard to the comment in the letter of May 24th, '06,  
8 the one the year before, essentially your office was  
9 referring to the same BMP's in general discharge  
10 practices, for example?

04:29

11 A. The May '07 letter is requesting a grading  
12 map, location and sizing of stormwater treatment  
13 features or other BMP's and how will discharge.

14 Q. Referring back to the letter of May 24th, '06,  
15 second paragraph, very last sentence, the last words  
16 say -- I'll read the last sentence, says, "Essentially,  
17 our review indicates that UAD needs more parts storage,  
18 more impermeable base and stormwater treatment units  
19 such as oil-water separators and operational BMP's."  
20 I'd like to ask you what you meant by operational BMP's  
21 here?

04:30

22 A. Operational BMP is an operational management  
23 practice, how is the facility going to operate to  
24 minimize or prevent pollution to the extent possible  
25 that you could do -- just how you conduct your business

**Verbatim** ■

1 outside of treatment units, physical treatment units.  
2 so if -- an operational BMP would be to drain your  
3 fluids indoors rather than outdoors.

4 Q. So is it fair to say it's a general term?

5 A. Yes, it's how you operate to minimize your  
6 problems.

7 MR. NEARY: I really --

8 MR. BIGGS: We're going -- excuse me, I'm  
9 finishing. You don't get up and walk out, that's  
10 just -- hold on. 04:31

11 MR. NEARY: I thought I said precisely 4:30.

12 MR. BIGGS: Actually, you, sir, have  
13 45 seconds. You're eating up my time, and I don't  
14 appreciate it. That kind of conduct is unprofessional,  
15 and I won't tolerate it.

16 Q. Mr. Azevedo?

17 A. Yes, sir.

18 Q. Excuse the interruption of Mr. Neary, who just  
19 used a dilatory tactic to obfuscate what I'm doing here,  
20 but isn't it true that UAD and Nest essentially strung 04:31  
21 your office along because on May 24th of '06, you were  
22 asking them to come up with BMP's that work, and then  
23 again May of '07 you're still asking them for BMP's that  
24 work?

25 MS. NIEMEYER: I'm going to object to leading,

**Verbatim** ■

1 argumentative --

2 MR. BIGGS: You can object all you want.

3 Q. I instruct you to answer.

4 A. In May of '06, as you pointed out, our --  
5 we're asking for operational BMP's, very generic. And  
6 if you consider the time frame, we had just received a  
7 report that wasn't adequate and we were sending it back.

8 In May of '07, we're talking about -- we're  
9 being more specific about locations and sizing of BMP's,  
10 so we're moving along. They are still -- they still 04:32  
11 haven't completed the work we need to in terms of every  
12 BMP and designing them and sizing them, but we've moved  
13 from '06 when we're at the beginning stages to '07 when  
14 we're being much more specific and focusing in on things  
15 that are not adequate, so this wasn't done.

16 Q. This was not done. I'll conclude there.

17 We went over one minute courtesy of Mr. Neary,  
18 and this deposition is not concluded, and I will see  
19 everybody back here on March 13th.

20 THE REPORTER: And just one more thing for the 04:33  
21 record. Would all counsel present like a transcript of  
22 the deposition?

23 (Whereupon, there was a discussion off the  
24 record.)

25 MR. NEARY: I'd like electronic format,

**Verbatim** ■

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

- - - -

PINOLEVILLE POMO NATION,  
PINOLEVILLE POMO NATION  
ENVIRONMENTAL ASSOCIATION,  
and LEONA WILLIAMS,

Plaintiffs,

vs.

No. C 07 2648 SI

UKIAH AUTO DISMANTLERS,  
WAYNE HUNT, ISABEL  
LEWRIGHT, WARRIOR  
INDUSTRIES, INC., RICHARD  
MAYFIELD, ROSS JUNIOR  
MAYFIELD, PAULA MAYFIELD,  
KENNETH HUNT, U.S. ALCHEMY  
CORP., and DOES 1-50,  
inclusive,

Defendants.

- - - -

DEPOSITION OF RICHARD AZEVEDO, P.E., VOLUME II

Held at the Offices of Biggs Law, PC

765 Baywood, Petaluma, California

Thursday, March 13, 2008, 9:49 a.m.

- - - -

**Verbatim** ■

1 elevations or plans prepared by a licensed engineer as  
2 to putting that tire pit or that pond into use, as has  
3 been contemplated here?

4 MS. NIEMEYER: I'm going to object to that  
5 question. I think it's leading. I don't think there's 01:17  
6 been any establishment that there is that requirement.

7 MR. NEARY: I'll join in that objection.

8 BY MR. BIGGS:

9 Q. Let me see what we have here. Maybe that  
10 question had too many things going on in it. 01:18

11 With regard to the pit, okay, the percolation  
12 pond, do you have any personal knowledge right now as to  
13 how that is being implemented?

14 A. Well, when you refer to "the pit," we  
15 generally -- that, in my mind, says the tire pit. When 01:18  
16 you refer to "the pond," I think of the new percolation  
17 pond in the back. So I'm confused by your question  
18 because you're using both terms.

19 Q. Well, actually you just clarified it for me.  
20 So there's a percolation pond -- 01:18

21 A. Yes.

22 Q. -- that stands alone and apart from the tire  
23 pit right now?

24 A. Yes.

25 Q. Now, with regard to that percolation pond, has 01:19

**Verbatim** ■

1 your office seen any engineering diagrams or materials  
2 related to the construction of that pond?

3 A. We have received something from NEST in a  
4 schematic drawing of where it's located and a  
5 cross-section, a conceptual cross-section of the  
6 drawing. 01:19

7 Q. I want to ask you a question about NEST. I  
8 understand that the gentleman with NEST is one Frederick  
9 Martin; is that correct?

10 A. Yes. 01:19

11 Q. Would that be the gentleman that submitted  
12 what you just described?

13 A. Yes.

14 Q. Do you have any personal knowledge as to his  
15 qualifications as an engineer? 01:19

16 A. Beyond what is on his signature block, which  
17 says, "Registered Environmental Assessor," I have no  
18 information.

19 Q. Would you happen -- I assume MS stands for  
20 master's in science? 01:20

21 A. Yes.

22 Q. I see, but could you enlighten me as to what  
23 the capitals REA might refer to?

24 A. Registered environmental assessor.

25 Q. And what is a registered environmental 01:20

**Verbatim** ■

1     assessor?

2                 MS. NIEMEYER: I'm going to object unless he  
3     has knowledge, but this isn't something that he  
4     necessarily knew about.

5                 THE WITNESS: It's defined in the law. 01:20  
6     Registered environmental assessor is defined in the law.  
7     BY MR. BIGGS:

8                 Q. Do you have any knowledge? And again, if you  
9     don't know, you don't have to guess.

10                A. I actually don't recall the specific 01:20  
11     definition.

12                Q. Would you happen to know, by chance, if  
13     there's a licensing requirement for an REA?

14                A. I believe there's an experience requirement.  
15     I don't recall if there's a testing requirement that 01:20  
16     goes with that. Certainly, less than any -- anything  
17     licensed through the Board of Professional Registration  
18     for geologists and engineers.

19                Q. The reason I'm asking is our records check  
20     indicates no licensing whatsoever for this gentleman. 01:21  
21     Has your office ever done any kind of check on his  
22     licensing?

23                A. No.

24                Q. Okay, thank you. So now I want to go back to  
25     this list over here. Now, you already clarified for us 01:21

**Verbatim** 

1 where it was pushed around to.

2 Q. When you say "east to west," can you paint a  
3 picture of that, to the best of your ability? Maybe  
4 describe a well-known feature, a landmark at UAD?

5 A. Well, if you look at the new crusher building 08:08  
6 and the new -- you look at the property line, the  
7 Mayfield property, from near the property line, just  
8 inside the property line, I don't know how many feet,  
9 that would have been the area where they excavated soil,  
10 and then they made -- they excavated it and pushed it 08:08  
11 toward the west, toward the crusher building and built  
12 up a little bit behind the crusher building. So it  
13 would be -- the low spot would be the driveway entrance  
14 where you came in, and that general or south direction,  
15 and the area that was built up would be behind the 08:09  
16 crusher building.

17 Q. Okay. Thank you. Now, I have here this  
18 document that I found in the records. It says, "Please  
19 deliver this four-page fax to Richard Azevedo." It's a  
20 fax transmission from Fred Martin, dated October 11th, 08:09  
21 2007.

22 (Whereupon, Plaintiffs' Exhibit No. 45 was  
23 marked for identification.)

24 BY MR. BIGGS:

25 Q. This document is addressed to you, and it's 08:10

**Verbatim** 



1 dated October 11, '07. Do you recognize this document?

2 A. Yes.

3 Q. Have you read this document before?

4 A. Yes.

5 Q. What does this document tell us?

08:10

6 A. It describes their soil testing results,  
7 basically talks a little bit of how they moved soil in  
8 preparation for the paving, talks about some of the  
9 things they've encountered. It talks about the fact  
10 that the concentration, hydrocarbon concentrations in  
11 the soil increase with depth. And he has a summary  
12 chart of analysis done. He's basically presenting some  
13 information here, summarizing what he's done and making  
14 some evaluations.

08:10

15 Q. Do you have anything else to say about this  
16 document?

08:11

17 A. We don't agree with some of his conclusions.

18 Q. Can you specify what those disagreements are,  
19 please?

20 A. They're making the assumption that there's  
21 little or no potential for affecting local groundwater  
22 quality. I'm not sure that we would agree with that  
23 statement at the time.

08:11

24 Q. Do you not agree -- do you agree with that  
25 statement now?

08:11

**Verbatim** ■

1 A. The Water Board, in November of '07, conducted  
2 some sampling, and we've reviewed NEST's sample results  
3 in terms of the total insoluble hydrocarbons out there,  
4 and it's the conclusion of staff at this point in time  
5 that there is some soluble hydrocarbons out there that 08:11  
6 probably can or could get into the groundwater.

7 Q. Were those notes, tests, and other materials  
8 part of the file that we would have received?

9 A. The Regional Board sample results and sample  
10 events would have been in the file. I do remember 08:12  
11 seeing those.

12 Q. Okay, so they should be here. Okay. Thank  
13 you.

14 And now we will move to this document. It's a  
15 three-page fax, and if you'll mark that, please. 08:12

16 (Whereupon, Plaintiffs' Exhibit No. 46 was  
17 marked for identification.)

18 BY MR. BIGGS:

19 Q. This document is dated October 15th. It's  
20 addressed to you, looks like it's from Mr. Martin of 08:13  
21 NEST. Do you recognize this document?

22 A. Yes.

23 Q. And have you read this document before?

24 A. Yes.

25 Q. Are you able to tell us what this document 08:13

**Verbatim** ■

1 means?

2 A. The original results that Fred Martin and NEST  
3 sent to us had some detail lacking. For example, the  
4 table that's in this refers to detection limits. The  
5 original sample results didn't have detection limits. A08:14  
6 result or a non-detectable result has no meaning unless  
7 you actually know what the detection limit is, so you  
8 have some perspective on that.

9 So in other words, we asked them to provide  
10 the detection limits for the tests that he performed, 08:14  
11 and that's what this table is. For the different  
12 constituents, he's listed the detection limits for the  
13 total petroleum hydrocarbon test and the wet tests. So  
14 that's what these are.

15 And then he's making some analysis regarding 08:14  
16 the motor oil and diesel oil, and he's making a lot of  
17 presentations about lead, what he's done in the past,  
18 which generally don't have a lot of merit in terms of  
19 supporting what he's proposing. Again, he's saying  
20 asphalt over this would encapsulate it, and we're not 08:15  
21 accepting what he's proposing, and we don't feel what  
22 has been submitted is adequate to document that it's not  
23 a problem to water quality now or in the future.

24 Q. Any further comments on this document?

25 A. Well, yes, since you mention it. Look at the 08:15

**Verbatim** ■

1 detection limit on the wet test for lead. Lead is where  
2 the column says PB. So the detection limit is listed as  
3 0.1 milligrams -- parts per million. That's really a  
4 hundred micrograms per liter. Fortunately, the current  
5 groundwater standard for lead in water is considerably 08:16  
6 less than a hundred micrograms, so when you do a soluble  
7 test that has a detection limit higher than water  
8 quality standard, the tests have no meaning. The test  
9 results have no validation. The detection limits were  
10 too high, so essentially we rejected all the wet tests 08:16  
11 for lead because of that reason. So that's probably the  
12 most striking thing that you would see here.

13 Q. Anything further?

14 A. No.

15 Q. Thank you. Let us now turn to a document here 08:16  
16 dated January 6 of 2008.

17 (Whereupon, Plaintiffs' Exhibit No. 47 was  
18 marked for identification.)

19 BY MR. BIGGS:

20 Q. This document is from Mr. Martin of NEST. 08:17  
21 It's addressed to you, and as I read this, it has a lot  
22 of formulas, a lot of math in here.

23 MS. NIEMEYER: I'm sorry, the next document  
24 is --

25 MR. BIGGS: January 6. 08:17

**Verbatim** ■

1 MR. NEARY: There's two of them.

2 THE WITNESS: There's two of them.

3 MS. NIEMEYER: So you're referring to --

4 MR. BIGGS: Yes.

5 MS. NIEMEYER: So I don't think that --

08:17

6 MR. NEARY: That's the problem we have if we  
7 don't mark the document.

8 MR. BIGGS: She just marked this one, so --

9 THE REPORTER: I marked this.

10 MR. BIGGS: Oh, you did. Let's back up to  
11 that one, then, stay on that one, then we'll go to the  
12 other one.

08:17

13 So are we all on the same page?

14 MS. NIEMEYER: The one she --

15 MR. BIGGS: Okay.

08:18

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. And this is basically a one-paragraph letter  
19 from Frederick Martin to Mr. Azevedo, and it goes to,  
20 regarding payment -- pavement on R & M Backhoe facility.  
21 It says, "Mr. Rick Mayfield tells me that you requested  
22 him to obtain a third party confirmation of a paved area  
23 for his facility." What's that all about?

08:18

24 A. Initially we found petroleum hydrocarbons at  
25 sample location A-1, which is on the Mayfield property

08:18

**Verbatim** ■

1 where the car crusher was stored during our original  
2 inspection. There has been discussion between our  
3 office and Mr. Mayfield about how he's progressing in  
4 cleaning up his site and things of that nature. And  
5 what we asked to have done was, because there were 03:19  
6 petroleum hydrocarbons detected, was to show us that the  
7 petroleum hydrocarbons had been removed and cleaned up,  
8 because he had mentioned he had scraped the area and  
9 found pavement. And we had suggested that it would be  
10 best that a third party document that that material had 03:19  
11 been removed and cleaned up.

12 That led to this letter with Fred Martin.  
13 Unfortunately, for some reason, we get this letter like  
14 this, and we really need more than just there's pavement  
15 there. We need to know that the hydrocarbons have been 03:19  
16 removed. So somehow there was a disconnect between what  
17 we needed and what we got.

18 Q. Okay. Thank you. Anything further on that  
19 point?

20 A. No, I think that clarifies it. 03:19

21 Q. By the way, looks like we have three or four  
22 items left, so I think, as far as my side is concerned,  
23 we'll be wrapping up maybe within ten minutes.

24 A. Okay.

25 Q. But this next document, the second document 03:20

**Verbatim** 

1 that is dated January 6, 2008, I find a little  
2 perplexing, so let me spend a little time on this.

3 (Whereupon, Plaintiffs' Exhibit No. 48 was  
4 marked for identification.)

5 BY MR. BIGGS:

08:20

6 Q. So we have this document here. To be frank  
7 with you, I don't understand it. Page 2, we have this N  
8 equals N-O with a large E, I-N one-half equals dash  
9 0.093 equals 1,732 seasons. I'm not an engineer, but  
10 you are, and will you spend some time -- we're almost 08:21  
11 done anyway -- and take a look at this, and the best you  
12 can so that lay people can understand, tell us what this  
13 is about, what Mr. Martin is communicating to your  
14 office.

15 A. The Regional Board posted a notice of public 08:21  
16 hearing for proposed remedial action, and in that  
17 posting was a map that showed some -- the extent of the  
18 excavation we thought was reasonable based on the soil  
19 samples results that we had to date. And we had asked  
20 for responses from all parties in 30 days. 08:22

21 This is the response from Fred Martin with  
22 regards to that proposal. They're essentially making  
23 numerous arguments in different directions that it's  
24 unnecessary to remove the amount of soil that we  
25 considered appropriate, and their capstone is, after all 08:22

**Verbatim** ■

1 these arguments and that sort of thing, they proposed to  
2 remove one cubic yard of soil, backfill those locations,  
3 and to pave. That's what they're proposing.

4 And so everything preceding the last paragraph  
5 is really their arguments and their rationale for not 08:23  
6 removing soil, and it ranges from cost, it ranges  
7 from we'll use more diesel than is in the soil, it's  
8 relatively immobile, and we're using this equation to  
9 try to get at the rate of leaching, et cetera, et  
10 cetera, et cetera. So their conclusion is, it's not 08:23  
11 appropriate to remove that soil.

12 Q. Anything further on that?

13 A. I think that covers it in conceptual terms.

14 Q. Okay. Now I would like to take a look at this  
15 e-mail, and I'll give this to you to mark that. 08:23

16 (Whereupon, Plaintiffs' Exhibit No. 49 was  
17 marked for identification.)

18 BY MR. BIGGS:

19 Q. Okay, I have here what appears to be an e-mail  
20 from Fred Martin to you. It's dated January 8, 2008, 08:24  
21 subject UAD. Do you recognize this e-mail?

22 A. Yes.

23 Q. Okay. He says he was in contact with Wayne  
24 and Marcy, and that UAD was inspected by the County on  
25 January 4th. Do you have any information about that 08:24

**Verbatim** ■